



No FEAR Act

The Notification and Federal
Employee Antidiscrimination and
Retaliation Act of 2002

Purpose

This training will acquaint you with the No FEAR Act and laws making discrimination and retaliation in the workplace illegal, and provide you with reference information, and points of contact.

This training should take no more than 45 minutes to complete. For your convenience, references are hyperlinked to provide additional information and resources.



[No FEAR Act \(PDF\)](#)



[No FEAR Act \(text\)](#)

Agency Requirements under the No FEAR Act

In addition to training, the No FEAR Act requires each Federal agency to:

- Submit an annual report to Congress that includes:

The number and status of discrimination/whistleblower cases; the number of employees disciplined for violations of these laws; a description of agency policy regarding the discipline of employees for violation of discrimination or whistleblower laws; an analysis of trends; any payments made for any discrimination or whistleblower judgment award or settlement;

- Post on its public web site:

A summary of statistical data relating to Equal Employment Opportunity (EEO) complaints filed by its employees, former employees, or applicants for employment.



[NRC No FEAR Act Statistical Data](#)

Key Antidiscrimination Statutes

There are a number of Federal laws that establish protection from employment discrimination in the Federal workplace, including:

- Title VII of the Civil Rights Act of 1964 (Title VII)

Prohibits employment discrimination based on race, color, religion, sex, or national origin.

- Civil Rights Act of 1991

Amended the Civil Rights Act of 1964, to strengthen and improve Federal civil rights laws, such as prohibiting retaliation.

- Rehabilitation Act of 1973

Prohibits discrimination against qualified individuals with disabilities who work in the Federal Government (and requires reasonable accommodation as appropriate).

Key Antidiscrimination Statutes

- The Americans with Disabilities Act of 1990, as amended (ADA)

Prohibits discrimination against qualified individuals with disabilities in the private sector, and in state and local governments.

[How to request a reasonable accommodation](#)

- Age Discrimination in Employment Act of 1967 (ADEA)

Protects individuals who are 40 years of age or older from discrimination.

- Equal Pay Act of 1963 (EPA)

Protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.

Key Antidiscrimination Statutes

- The Lilly Ledbetter Act of 2009

Expands the time a complaint of wage discrimination is actionable under the ADEA, Title VII, and the ADA.

- Pregnancy Discrimination Act of 1978 (Pregnancy Act)

Prohibits discrimination based on pregnancy.

- The Genetic Information Nondiscrimination Act of 2008 (GINA)

Prohibits discrimination against employees or applicants because of an individual's genetic tests and the genetic tests of an individual's family members.

Discrimination and Reprisal Protection under the Civil Service Reform Act of 1978 and Executive Order 13087

Other Federal laws, not enforced by the Equal Employment Opportunity Commission (EEOC) also prohibit discrimination and reprisal against Federal employees and applicants.

The Civil Service Reform Act of 1978 (CSRA) was designed to promote overall fairness in Federal personnel actions. The CSRA provides that certain personnel practices can not be based on attributes or conduct that do not adversely affect employee performance, such as marital status and political affiliation. The Office of Special Counsel (OSC) has interpreted this provision to include a prohibition against discrimination based on sexual orientation. In addition, Executive Order 13087, issued on May 28, 1998, also prohibits discrimination based upon sexual orientation within Executive Branch civilian employment.

The CSRA also prohibits reprisal against Federal employees or applicants for whistleblowing, or for exercising an appeal, complaint, or grievance right. The CSRA is enforced by both the OSC and the Merit Systems Protection Board (MSPB).

NRC Policy for Preventing and Eliminating Harassing Conduct in the Workplace

Annually, the Agency issues a reminder to employees of its Policy prohibiting harassing conduct in the workplace. Under the Policy, the definition of harassing conduct is any unwelcome verbal, visual, physical or other conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, or retaliation for participation in protected EEO activities.

To constitute harassing conduct under this Policy, one of these two conditions must be present:

A.

The behavior reasonably can be considered to affect the work environment adversely. Examples may include: offensive remarks or comments; ridicule; phrases, epithets, or jokes; suggestive comments and unwelcome requests for sexual favors; exposure to offensive photographs, explicit drawings, cartoons, emails, or internet transmissions; touching; pinching; grabbing; gesturing; or stalking.

B.

An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct. Examples may include: promoting or not promoting an employee; or taking or not taking a personnel action affecting the employee's conditions of employment based on the employee accepting a date or sexual favor.

The Policy provides explicit procedures for reporting, investigating, and resolving allegations of harassment. All employees are responsible to know this Policy. Filing a report of harassing conduct under this Policy does not satisfy the requirements to initiate any complaint, appeal or other statutory or regulatory process that may apply, nor does it delay the time limits for initiating those procedures.



[Policy for Preventing and Eliminating Harassing Conduct in the Workplace](#)

Statutory and Collective Bargaining Prohibitions Against Harassment

Bargaining unit employees who choose to pursue collective bargaining remedies for unlawful harassment must file a grievance under the Collective Bargaining Agreement (CBA), Article 46, within 15 work days. Non-bargaining unit employees may file an administrative grievance under NRC Management Directive 10.101, within 10 work days.

Nothing in the NRC Policy for Preventing and Eliminating Harassing Conduct in the Workplace affects the rights of an individual to contact the Office of the Inspector General (OIG), to participate in the EEO complaint process, to file an appeal with the MSPB, to initiate an agency administrative grievance, or for bargaining unit employees to initiate a grievance under the CBA.



[NRC-NTEU Collective Bargaining Agreement](#)

How Do I File a Claim of Discrimination or Retaliation

Equal Employment Opportunity (EEO) Complaints

The NRC provides individuals who believe they have been subjected to unlawful discrimination under civil rights statutes a prompt, fair, and impartial administrative process to pursue a complaint. This process is administered by the Office of Small Business and Civil Rights (SBCR), in accordance with EEOC Regulations at 29 C.F.R. 1614.

An employee who chooses to pursue statutory remedies for unlawful harassment must initiate the EEO complaint process by contacting an EEO Counselor within 45 calendar days from the date of the alleged discrimination, harassment or personnel action. Contact information for EEO Counselors is prominently displayed on posters within NRC facilities, and is also provided on the NRC intranet.

NTEU Collective Bargaining Agreement

The employee may alternatively file a grievance alleging discrimination under the CBA in accordance with 29 C.F.R. 1614 Subpart C. The employee may only elect one of these processes.

Alternate Procedures to File a Claim of Discrimination or Retaliation

Under certain circumstances you may have an alternative to pursuing your allegation of discrimination through the NRC EEO complaint process. These alternatives include:

The Age Discrimination in Employment Act (ADEA)

You may file directly in U.S. District Court on an allegation of age discrimination (age 40 and over).

The Equal Pay Act (EPA)

You may file a civil action directly in U.S. District Court. You may pursue an allegation of gender-based discrimination under both Title VII and the EPA simultaneously within 2 years of the alleged violation (3 years if the violation was willful).

If your allegation of discrimination involves a personnel action that is appealable to the MSPB (e.g. termination for cause; downgrade; suspension of more than 14 calendar days), you may elect to file a mixed case appeal directly to the MSPB, (within 30 days after the effective date of the action being appealed, or 30 days after receipt of the agency's decision, whichever is later), or a mixed case complaint through SBCR's complaint process, but not both.

Rights and Protections Regarding Whistleblower Protection

Whistleblowing is defined as the lawful disclosure of information that an employee reasonably believes is evidence of a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.

NRC employees receive whistleblower protection from three primary sources:

The Whistleblower Protection Act of 1989

http://www.osha.gov/OshDoc/data_General_Facts/whistleblower_rights.pdf

http://osc.gov/documents/pubs/post_wbr.pdf

http://osc.gov/documents/pubs/post_ppp.pdf

The Energy Reorganization Act of 1974, as amended

<http://www.internal.nrc.gov/HR/pdf/rights-under-era.pdf>

The Inspector General Act of 1978

<http://www.archives.gov/about/laws/inspector-act-1978.html>

Rights and Protections Under the Whistleblower Protection Act of 1989

The Whistleblower Protection Act of 1989 was enacted to strengthen protection for Federal employees who claim that they have been subjected to prohibited personnel actions because of their whistleblower activities.

The OSC is an independent Federal agency that investigates and prosecutes allegations of prohibited personnel practices, with an emphasis on protecting Federal Government whistleblowers. It seeks corrective action remedies as appropriate.

Prohibited Personnel Practices Under the Whistleblower Protection Act

Any employee who has authority to take, direct others to take, recommend or approve any personnel action, shall not, with respect to such authority:

1. Discriminate on the bases of sex, national origin, color, religion, disability, age, marital status, sexual orientation, or political affiliation.
2. Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics.
3. Coerce the political activity of any person, or take action against any employee as reprisal for refusing to engage in political activity.
4. Deceive or willfully obstruct any person from competing for employment.

Prohibited Personnel Practices Under the Whistleblower Protection Act

5. Influence any person to withdraw from competition for a position to improve or injure the employment prospects of any other person.
6. Give an unauthorized preference to a person to improve or injure the employment prospects of any particular employee or applicant.
7. Engage in nepotism (hire, promote, or advocate the hiring of relatives).
8. Take a personnel action against an employee because of whistleblowing.
9. Take a personnel action against any employee because of the exercise of an appeal, complaint, or grievance right.

Prohibited Personnel Practices Under the Whistleblower Protection Act

10. Discriminate against an employee on the basis of conduct, which does not adversely affect the performance of the employee.
11. Take or fail to take a personnel action, if such action would violate a veterans' preference requirement.
12. Take a personnel action against an employee which violates a law, rule, or regulation which implements a merit systems principle at 5 U.S.C. 2301.

Procedures for Filing Claims under the Whistleblower Protection Act

Any NRC employee who believes they have been subjected to a prohibited personnel action in retaliation for whistleblowing, may file an appeal with the MSPB; or a complaint with the OSC. If your allegation of whistleblower retaliation involves a personnel action that is appealable to the MSPB, you may file an appeal directly to the MSPB no later than 30 days after the effective date of the action being appealed, or 30 days after receipt of the agency's decision, whichever is later.

If the personnel action is within the MSPB's jurisdiction, the employee may also elect to file a complaint with the OSC before filing an appeal with the MSPB. If the personnel action does not fall under the MSPB jurisdiction, you must first file a complaint with the OSC before filing an appeal with the MSPB.

Procedures for Filing Claims under the Whistleblower Protection Act

After the OSC complaint process is exhausted, the appellant may file an appeal with the MSPB no later than 65 days after the date that OSC's written notification was issued terminating the investigation.

If OSC has not notified the employee that it will seek corrective action within 120 days of the filing date, the appellant may file an MSPB appeal at any time after the 120 day period expires.

Alternate Procedures for Filing Claims under the Whistleblower Protection Act

Employees who believe they have been subjected to prohibited personnel actions in retaliation for whistleblower activities, may also file a grievance under the CBA; however, you must choose either one of the statutory procedures or the negotiated grievance procedure, but not both.

Although employees who believe they have been subject to a prohibited personnel action in retaliation for whistleblowing are encouraged to bring such matters to the attention of their management officials, they may also notify the NRC OIG.

Rights and Protections for Whistleblowers under the Energy Reorganization Act of 1974, as amended

The Energy Reorganization Act (ERA) makes it illegal to discharge or otherwise retaliate against an employee in terms of compensation, conditions, or privileges of employment because the employee or any person acting at an employee's request engages in protected activity.

Employers covered by the ERA are:

- The Nuclear Regulatory Commission
- A contractor or subcontractor of the NRC
- A licensee of the NRC or an agreement state, and the licensee's contractors and subcontractors
- An applicant for a license, and the applicant's contractors and subcontractors
- The Department of Energy (DOE)
- A contractor or subcontractor of the DOE under the Atomic Energy Act (AEA)

Rights and Protections for Whistleblowers under the Energy Reorganization Act of 1974, as amended

You are engaged in protected activity when you:

- Notify your employer of an alleged violation of the ERA or the AEA
- Refuse to engage in any practice made unlawful by the ERA or the AEA
- Testify before Congress or at any Federal or state proceeding regarding any provision or proposed provision of the ERA or the AEA
- Commence or cause to be commenced a proceeding under the ERA, or a proceeding for the administration or enforcement of any requirement imposed under the ERA
- Testify or are about to testify in any such proceeding
- Assist or participate in such a proceeding or in any other action to carry out the purposes of the ERA or the AEA

Prohibited Personnel Practices under the Energy Reorganization Act

Employers may not retaliate against you for engaging in protected activity by:

- Intimidating
- Threatening
- Restraining
- Coercing
- Blacklisting
- Firing
- or in any other manner retaliating against you

Procedures for Filing Claims under the Energy Reorganization Act

Filing a complaint: You may file a complaint within 180 days of the retaliatory action. A complaint must be in writing, and may be delivered in person or by mail at the nearest local office of the Occupational Safety and Health Administration (OSHA), Department of Labor (DOL), or with the Office of the Assistant Secretary, OSHA, U.S. Department of Labor, Washington, D.C. 20210.

If DOL has not issued a final decision within one year of the filing of the complaint, you have the right to file the complaint in U.S. District Court for de novo review, so long as the delay is not due to your bad faith.

Occupational Safety and Health Administration (OSHA)

- [Energy Reorganization Act \(ERA\)](#)
- [Your Rights Under the Energy Reorganization Act. - 24 App A](#)
- [Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provisions of Six Federal Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as Amended](#)

Contacts:

Office of General Counsel at 301-415-1550

Office of the Inspector General at 301-415-5930 or 1-800-233-3497

Office of Human Resources at 301-492-2076

Office of Small Business and Civil Rights at 301-415-7380

NTEU Union Office at 301-415-3600

NRC EEO Counselors

<http://www.nrc.gov/about-nrc/civil-rights/eo/edc-process/nrc-counselors.html>

Administrative Agency Contacts

Merit Systems Protection Board <http://www.mspb.gov>

Equal Employment Opportunity Commission <http://www.eeoc.gov>

The Office of Special Counsel <http://www.osc.gov>

Occupational Safety and Health Administration <http://www.osha.gov>

Related NRC Policies and Programs

1. “NRC Policy for Preventing and Eliminating Harassing Conduct in the Workplace”

<http://www.internal.nrc.gov/announcements/yellow/2007/2007-004.html>

2. Management Directive 7.4 “Reporting Suspected Wrongdoing and Processing OIG Referrals”

<http://www.internal.nrc.gov/policy/directives/archive/7.4/md7.4.pdf>

3. “Equal Employment Opportunity Program”

<http://www.internal.nrc.gov/announcements/yellow/2007/2007-144.html>

4. NRC’s Civil Rights Program website

http://www.internal.nrc.gov/SBCR/civil_rights.html

5. Procedures for Accommodation of Persons with Disabilities”

<http://www.nrc.gov/about-nrc/employment/diversity/reasonable.pdf>

Related NRC Policies and Programs

6. “Your Rights Under the Energy Reorganization Act”
<http://www.internal.nrc.gov/HR/pdf/rights-under-era.pdf>
7. “Agency Policy On Appropriate Disciplinary Action for Engaging in Prohibited Personnel Practices”
<http://www.internal.nrc.gov/HR/pdf/no-fear-policy.pdf>
8. “Rights and Protections Regarding Whistleblower Protection, Anti-Discrimination and Retaliation”
<http://www.internal.nrc.gov/HR/pdf/rights-and-protections.pdf>
9. “Employee Information Regarding Whistleblower Protection, Anti-Discrimination and Retaliation”
<http://www.internal.nrc.gov/HR/whistleblower.html>

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